Supreme Court, U.S.
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No.

In the Supreme Court of the United States

OCTOBER TERM, 1994

PETE ROSS, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

PETITION FOR WRIT OF CERTIORARI

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OCTOBER 1994

26 pp

QUESTION PRESENTED

Whether the defense motion for a mistrial should have been granted, since the military judge improperly allowed a psychologist to testify about the petitioner's potential for future violence.

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Pete Ross, respectfully prays that a writ of certiorari issue to review the order of the United States Court of Military Appeals entered in his case on 25 July 1994.

OPINIONS BELOW

The order of the United States Court of Military Appeals, not reported, is located at Appendix A. The decision of the United States Air Force Court of Military Review, unpublished, ACM 29412, (A.F.C.M.R. 17 February 1993), is located at Appendix B.

JURISDICTION

The final order of the United States Court of Military Appeals was entered on 25 July 1994. The jurisdiction of

this Court is invoked under 28 U.S.C.A. § 1259(3) (Supp. 1993) and 10 U.S.C.A. § 867(a) (Supp. 1993).

STATUTORY PROVISION INVOLVED

Rule for Courts-martial 915(a) states, in pertinent part, "The military judge may, as a matter of discretion, declare a mistrial when such action is manifestly necessary in the interest of justice because of circumstances arising during the proceedings which cast substantial doubt upon the fairness of the proceedings . . ."

The Discussion states, in pertinent part, "The power to grant a mistrial should be used with great caution, under urgent circumstances, and for plain and obvious reasons. As examples, a mistrial may be appropriate when inadmissible matters so prejudicial that a curative instruction would be inadequate are brought to the attention of the members . . ."

STATEMENT OF THE CASE

The petitioner worked in the pediatrics department at the Bergstrom Air Force Base Hospital where he met his wife, Amanda, who was employed there as a medical assistant and later as a housekeeper. They first went out together in July 1989 and were married on 27 January 1990. R. 122-23. Mrs. Ross had been married previously three times and had four children from those marriages, ranging in age from eight to thirteen. R. 124.

In September 1990, Mrs. Ross testified that her eight year old son, Ronald Wayne Hyatt, Jr., nicknamed C.J., was allowed to play with a miniature dart set that Mrs. Ross had given the petitioner. C.J. was supposed to play with it in the garage, and was required to put it away when he was finished. That evening after the children had gone to bed, the petitioner went to the garage and found one of

the darts on the floor. The petitioner went to C.J.'s room and stuck him with the dart in the leg because he left it out in the garage. Mrs. Ross heard C.J. whimper and cry out. R. 125. Mrs. Ross described the mark on C.J.'s leg from the dart as a "pin prick" enough to break the skin and cause it to bleed a little. R. 126. C.J. testified essentially the same. R. 293-99.

Sometime shortly after the dart incident, the petitioner moved out of the house he previously occupied with Mrs. Ross and her children. While at a friend's house, Mrs. Ross saw the petitioner's car drive down to the house where she and her children still resided. When she returned to the house, she smelled a burning odor and found moth balls crushed up in the master bedroom, behind the refrigerator, near an antique icebox in the living room, and behind the children's bathroom toilet. She testified she saw a container of cleaning fluid that contained ammonia on the living room desk and believed this had been poured on the moth balls to cause the odor. R. 127-29. She opened the windows, vacuumed the house, and was able to stay in the house that evening. R. 130. The house was co-owned by the petitioner and Mrs. Ross and was located about 14 miles off the base. R. 163. Christopher Brown testified he was a friend of the petitioner's, and that, when confronted about the seriousness of the fumes, he said he didn't know pouring ammonia on moth balls made a poisonous gas. R. 301.

A week prior to 30 December 1990, Mrs. Ross had moved out of the petitioner's house to an apartment. She was contemplating divorce, despite some hope for the marriage that had developed during counseling she and the petitioner had attended. R. 131. On 30 December 1990, Mrs. Ross found a note on her apartment door from the petitioner that said, "Mandy, I need to talk to you ASAP, please." R. 132. Mrs. Ross testified she was worried the

petitioner might try to commit suicide. R. 133. Mrs. Ross went to work that day at the hospital. At about eight o'clock in the evening, the petitioner came to the hospital and wanted her to go with him to watch a tape. Mrs. Ross told him she wouldn't, and told him she wanted a divorce. The petitioner became upset, tearing up some pictures of the two of them, and giving Mrs. Ross back his wedding band. R. 134-35.

After ten o'clock when Mrs. Ross got off work, she got in her van to go home. As she drove off base, the petitioner came from the back of the van carrying a knife. She testified the petitioner held the knife to her side and told her they were going to the house to see the videotape. She refused to go. R. 137. She testified he said he would kill her if she didn't go. She cut her left thumb on the blade of the knife. As they struggled, the petitioner pulled the scarf around her throat and tried to stab her in the throat with the knife. Mrs. Ross fought him off, catching the knife on the middle finger of her right hand. R. 139. They continued to struggle, and the petitioner stabbed Mrs. Ross in the right thigh. R. 140. The struggle continued, and eventually the petition brought the car to a stop and got out of the car on the driver's side. Mrs. Ross testified the petitioner doubled her scarf around her neck and pulled on it to the point of her passing out. R. 142. When she regained consciousness, the petitioner had her drive to his house. R. 143. Mrs. Ross' van lost a wheel cover and sustained damage to the bumper. She didn't know how this happened. R. 155. Special Agent Wales testified about an old blue Pontiac vehicle parked off base on Cardinal Loop between an elementary school and a high school. He found evidence at this spot that led him to believe Mrs. Ross' van had hit the Pontiac, but it could have been in such a way that she didn't realize she struck the Pontiac. R. 373-74.

When Mrs. Ross and the petitioner arrived at his house, he supported her and walked her into the house and took her to a chair at the kitchen table. R. 156. The video tape the petitioner wanted Mrs. Ross to watch was about adult children of alcoholics. R. 185. The petitioner cried as he and Mrs. Ross watched the video. She comforted him, and he kissed her. After watching the video, the petitioner bandaged her leg. R. 157.

Mrs. Ross convinced the petitioner to go to a psychiatric hospital where he had previously received counseling. While there, she informed a nurse that she needed help. The police came and arrested the petitioner, and Mrs. Ross was taken to a medical hospital. R. 158.

With regard to the other charges, Ms. Rita Cedillo, the petitioner's former girlfriend, testified she was currently employed and had been employed at the Bergstrom AFB Hospital for two and a half years. R. 212. She met the petitioner shortly after she began working there. R. 213. She and the petitioner had sexual intercourse several times. R. 224. Ms. Cedillo had seven children from two prior marriages. R. 214.

Ms. Cedillo testified she had her tubes tied on 26 May 1988. However, there were times when she felt nauseated, and she and the petitioner thought she might be pregnant. R. 229-30. Ms. Cedillo testified that in June 1989, the petitioner pulled up behind her in his truck while she was going to the grocery store, pushing her to the side of the road. R. 214-16. This occurred in the morning before lunch time. R. 238-39. The petitioner reached in through her open window and grabbed her keys from her car. R. 217. Even though she was scared, she never thought to roll up her window from the time she first saw the petitioner to the time he reached in and grabbed her keys. R. 241. The petitioner asked to talk to her for five minutes, and Ms. Cedillo got out of her car while the petitioner parked her

car. She got into the petitioner's car, and he drove for about 30 minutes to the petitioner's trailer house. During the trip, Ms. Cedillo told the petitioner two times that she wanted to go back to her car. R. 220-22.

When they arrived at the trailer, the petitioner locked the door by twisting the door knob. R. 234. She didn't remember there being a chain or a dead bolt. R. 235. They both sat on the couch and talked about their relationship. R. 225. She tried to call the police on the telephone, but the line was dead. Ms. Cedillo tried to go forward for the door, but the petitioner put his feet between hers, and she fell over and hit the back of her head. R. 226. While Ms. Cedillo was still on the floor, the petitioner walked all the way into the back bedroom and got a metal coat hanger. R. 226. Ms. Cedillo didn't black out when she fell. R. 246. The petitioner could not see Ms. Cedillo when he was in the bedroom. R. 246. He stretched the hanger out lengthwise with the hook remaining on one end. R. 228. He then held the hook end of the coat hanger in the flames of the gas stove in the trailer's kitchen for about five minutes. It became red from the heat. R. 227-28.

The petitioner put the hanger on the floor where he kneeled on top of her. R. 249. He then unbuttoned and pulled down her pants, with Ms. Cedillo fighting him. The petitioner told Ms. Cedillo he was going to give her an abortion, and he put about an inch and three quarters (the portion of the hook from the hook to the tail end of the hook) of the hanger in her vagina and moved it around for five or ten minutes. At first the hanger felt warm to Ms. Cedillo. R. 228-29. The petitioner put the entire hook inside her vagina. R. 249. She was struggling when the hanger was inside of her, that she kept trying to push the petitioner away, and that she kept trying to close her legs. R. 264. She kept still when he had the hanger inside of her.

When the petitioner removed the hanger hook from her vagina, he unzipped his pants, took his penis in his hands, and ejaculated on her stomach. He went to the bathroom to clean himself off and came back and threw a towel at Ms. Cedillo. The petitioner then took her back to her car. R. 230-31.

The petitioner was convicted of kidnapping and aggravated assault of his wife, the assault of his young stepson, disorderly conduct, and the kidnapping and assault of his girlfriend, in violation of Articles 128 and 134 of the Uniform Code of Military Justice (U.C.M.J.).

During sentencing, Dr. Larson, the Chief of Mental Health at Bergstrom Air Force Base, was called during an Article 39(a) session by the government because of the defense's objection to his testimony on the petitioner's potential for future violence. He was qualified as an expert in clinical psychology. R. 534-35. He testified he had seen the petitioner on a number of occasions, administered standardized tests to him, and diagnosed him as having a dependent personality, being aggressive, and being narcissistic. R. 535-36. Dr. Larson had only spent a total of three hours with the petitioner. R. 545.

During the Article 39(a), the following ensued:

> TC: Being made aware of the charges and the findings of this court-martial, with respect to those charges, *do you have an opinion as to the accused's future potential for violence?*
>
> A: Given that he has not had any therapy or very limited therapy, I would say that the potential is very high. There seems to be a gradual build up.

R. 537 (emphasis added).

On cross examination, the following took place:

> Q: What is your opinion as to Sergeant Ross' future potential for violence based on?

A: I think if we look at the incidences, there seems to be a gradual increase in the violence. And, in the absence of therapy, there's no way to counteract that, and the potential, therefore, increases. The best projecture of future behavior is past. To change his behavior, there must be some intervention.

R. 539-40.

The doctor also stated he based his prediction as to future violence on the offenses of which the petitioner was convicted. R. 540. Dr. Larson did not have outside information, he had not talked to any of the petitioner's supervisors, he had not observed the petitioner performing his dutires, and he had never read the petitioner's military record in making his prediction. R. 540. The military judge improperly considered the opinion as rehabilitation potential evidence. R. 546.

During his testimony in front of the members, Dr. Larson testified he diagnosed the petitioner as having a border line personality, which included frequent suicide attempts or gestures and emotional relationships with high degrees of anxiety, depression, and angry outbursts. He also testified the petitioner had very volatile, intense relationships, questions about identity, extreme fear of abandonment, and self-defeating behaviors. R. 553. He also referred to a diagnosis in 1989 of passive aggressive personality disorder, narcissistic personality disorder, and dependent personality disorder. He defined passive aggressive personality as exhibiting a volatile temper and rebelliousness. He defined narcissistic traits as being very self-centered, following one's own set of rules, and allowing a mere desire to justify such behaviors. R. 554. In front of the court members, the trial counsel again asked the doctor if he had an opinion as to the petitioner's future potential for

violence. Dr. Larson responded, "I think the potential is very high for violence." R. 554.

After Ms. Cedillo and Mrs. Ross had testified for the government, and after the petitioner had presented his unsworn statement, the military judge held an Article 39(a) session, stating that Dr. Larson's testimony caught him by surprise. R. 562. In an attempt to cure this extremely prejudicial error, the military judge instructed the members as follows:

> . . . I want you to disregard the testimony of Dr. Larson. Basically, it isn't helpful. And, his testimony really isn't relevant, and it shouldn't have been admitted. Basically, he testified that in his opinion the accused has violent tendencies. Well, he based that on the charges. You have as much before you as he had before him in making that determination. So, it's not a matter of expert opinion. So, I want you to just disregard his testimony. Can each of you do that? Affirmative nod from each of the members.

R. 569-70.

The military judge denied the defense counsel's motion for a mistrial. The petitioner was sentenced to 20 years confinement, a dishonorable discharge, total forfeitures, and reduction to E-1.

The United States Air Force Court of Military Review held that the testimony should have been excluded, but that a mistrial was a drastic remedy, since the curative instruction was sufficient to purge any prejudice to the petitioner. Accordingly, they affirmed the conviction. *United States v. Ross,* unpublished, ACM 29412, (A.F.C.M.R. 17 February 1993). (Appendix B).

The United States Court of Military Appeals granted review of the issue, but did not issue an opinion. In its Order, dated 25 July 1994, the Court said that "assuming

arguendo that the military judge correctly decided that the testimony should not have been admitted, we are satisfied that the instructions of the military judge to disregard the testimony of Dr. Larson were sufficient to cure any harm from that evidence." (Appendix A).

REASON FOR GRANTING THE WRIT

Generally, a mistrial is appropriate when circumstances arising during a proceeding cast substantial doubt on the fairness of those proceedings. R.C.M. 915(a); *United States v. Jeanbaptiste,* 5 M.J. 374 (C.M.A. 1978). Often, a limiting instruction is adequate to remedy an inadvertent exposure of the jury to impermissible information, but there are circumstances where, ". . . the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical human limitations of the jury system cannot be ignored." *Bruton v. United States,* 391 U.S. 123 (1968); *see generally, Cruz v. New York,* 481 U.S. 186 (1987); *United States v. Evans,* 27 M.J. 34 (C.M.A. 1988). The law recognizes the human limitations of jurors to limit their consideration of inadmissible evidence to which they have been inadvertently exposed and, in some circumstances, a court may declare a mistrial even over a defense counsel's objection. *United States v. Donley,* 33 M.J. 44 (C.M.A. 1991); *Arizona v. Washington,* 434 U.S. 497, 506 n.18 (1978).

Although the decision to grant a mistrial rests within the trial judge's discretion, an appellate court can reverse this determination when there is clear evidence of abuse of discretion. *United States v. Rushatz,* 31 M.J. 450 (C.M.A. 1990). In the case *sub judice,* there was clearly an abuse of discretion. The court members' exposure to Dr. Larson's inflammatory testimony in the petitioner's case was hardly

inadvertent. The military judge specially allowed it after hearing the harmful testimony in an Article 39(a) session. Trial defense counsel vigorously objected to Dr. Larson's testimony during the Article 39(a) session. R. 545-548. He specifically objected that rehabilitation potential did not include predictions about future violence. R. 546. Defense counsel argued that the government didn't lay a proper foundation for Dr. Larson to testify about rehabilitation potential. He did nothing more than base his opinion on the past behavior of appellant. Such testimony is prohibited. *United States v. Ohrt,* 28 M.J. 301 (C.M.A. 1989). The military judge's statement that Dr. Larson's testimony took him by surprise and that he allowed it because the defense counsel didn't object is simply not supported by the record.

In the instant case, the petitioner urges that the circumstances were such that the military judge should have granted the defense motion for a mistrial. The cautionary instruction was simply not enough, and it again emphasized the doctor's comments about the petitioner's potential for future violence. The defense went to great pains to prevent this highly inflammatory testimony from coming before the members by requesting an Article 39(a) session, only to be overruled by the military judge. Notwithstanding the military judge's attempts to rehabilitate the members, it is unreasonable to believe that, as human beings, the court could totally put out of mind this testimony of the petitioner's propensity for future violence. Indeed, the petitioner asserts this prejudice was reflected in the lengthy confinement he received.

CONCLUSION

A clear understanding of what constitutes an abuse of discretion is crucial in determining when justice requires that a mistrial be granted. Resolution of this case will have wide applicability throughout both military and civilian courts.

Respectfully submitted,

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OCTOBER 1994

APPENDICES

APPENDIX A

UNITED STATES COURT OF MILITARY APPEALS

USCMA Dkt. No. 93-0808/AF
CMR Dkt. No. 29412

UNITED STATES, APPELLEE

v.

PETE ROSS (449-96-4712), APPELLANT

ORDER

On further consideration of the granted issue (38 MJ 438), and assuming *arguendo* that the military judge correctly decided that the testimony should not have been admitted, we are satisfied that the instructions of the military judge to disregard the testimony of Dr. Larson were sufficient to cure any harm from that evidence. *See United States v. Garces,* 32 MJ 345, 349 (CMA 1991), *citing Tennessee v. Street,* 471 U.S. 409, 415, 105 S.Ct. 2078, 2082, 85 L.Ed.2d 425 (1985). Accordingly, it is, by the Court, this 25th day of July, 1994

ORDERED:

That the decision of the United States Air Force Court of Military Review is affirmed.

For the Court,

/s/ John A. Cutts, III
Deputy Clerk of the Court

cc: The Judge Advocate General of the Air Force
Appellate Defense Counsel (MOUL)
Appellate Government Counsel (PETERSON)

APPENDIX B

UNITED STATES AIR FORCE
COURT OF MILITARY REVIEW

ACM 29412

UNITED STATES

v.

TECHNICAL SERGEANT PETE ROSS, FR449-96-4712
UNITED STATES AIR FORCE

---

17 February 1993

Sentence adjudged 19 April 1991 by GCM convened at Bergstrom Air Force Base, Texas. Military Judge: Wade B. Morrison.

Approved sentence: Dishonorable discharge, confinement for 20 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Jeffrey R. Owens, Major Mary C. Yastishock, and Captain Ursula P. Moul.

Appellate Counsel for the United States: Lieutenant Colonel Brenda J. Hollis, Major Paul H. Blackwell, Jr., Major Jeffrey C. Lindquist, and Captain David C. Wesley.

Before

O'HAIR, SNYDER, and GRUNICK
Appellate Military Judges

OPINION OF THE COURT

GRUNICK, Judge:

Contrary to his pleas, appellant was convicted by general court-martial, which included enlisted members, of the kidnapping and aggravated assault of his wife, the assault of his young stepson, disorderly conduct, and the kidnapping and assault of his girlfriend over a year before the primary charge, in violation of Articles 128 and 134, UCMJ. The sentence approved by the convening authority included a dishonorable discharge, confinement for 20 years, total forfeitures, and reduction to E-1. While we find no prejudicial error and affirm, a discussion of some of the 10 assigned errors is appropriate.

SEVERANCE

Appellant asserts the military judge erroneously denied his motion to sever the charges and group them into three separate trials: 1) the kidnapping and aggravated assault of his spouse, 2) the additional charges involving disorderly conduct and assault of his stepson, and 3) the second additional charge involving the kidnapping and aggravated assault of his girlfriend.

R.C.M. 307(c)(4) provides: "Charges and specifications alleging all known offenses by an accused may be preferred at the same time." R.C.M. 601(e)(2) provides: "In the discretion of the convening authority, two or more offenses against an accused may be referred to the same court-martial for trial, whether serious or minor offenses or both, regardless whether related." R.C.M. 906(b)(10) recognizes the authority of the military judge to sever charges and specifications "to prevent manifest injustice."

Appellant complains the assault and kidnapping charges involving his wife spilled over and prejudiced his defense

to the assault and kidnapping charges involving his girlfriend. In light of the factual presentation in this case, including the live testimony of each of the victims, we believe it was possible for a rational fact finder to separate the evidence of the incidents. The presentation by the Government in its case-in-chief separated the events with direct, strong, and distinct evidence. There was no cross-examination of appellant, nor was there any rebuttal evidence that would tend to merge the incidents.

Although the charges involving appellant's wife and girlfriend were both alleged as violations of Articles 128 and 134, UCMJ, the surrounding circumstances of these two events were factually dissimilar and 18 months apart. Because the evidence for both incidents was direct, strong, and distinct, we find proof of one did not spill over and prove the other. *United States v. Haye,* 29 M.J. 213 (C.M.A. 1989). Appellant's kidnapping of his wife was accomplished with violence when he hid in the back of her mini-van, came out of hiding, and slashed at her with a knife as she was driving. Appellant stabbed his wife in the leg, threatened to kill her, and forced her to drive to his home.

The kidnapping and assault incident involving appellant's girlfriend occurred 18 months before the incident with his wife. It remained unreported to authorities until the latter stages of the more recent kidnapping investigation. Appellant stopped his girlfriend as she drove home and persuaded her to go for a short ride with him. He took her to his trailer and held her, against her will, for a number of hours. Since they had been for some time in the process of dissolving their relationship, appellant became angry when they were unable to reconcile. Appellant knocked his girlfriend to the floor and held her down while inserted a straightened coat hanger into her vagina.

The girlfriend testified appellant stated he believed she was pregnant and was attempting to abort the baby.

Judge Cox in the *Haye* decision, *supra,* at 215, stated; "One test that might be used in judging the possibility of spill over is to determine whether the evidence present as to one charge would be independently admissible to prove the other." The only common thread between appellant's final confrontations with his wife and girlfriend was his motive to get their attention and possible sympathy for a continued relationship. Although the connection between the two incidents was not made in this case, had the charges been severed, we find the proof of one would have been admissible to prove the other in the area of motive or intent. Mil. R. Evid. 401, 402, 404(b).

Although the military judge did not instruct the court members to keep the evidence of the two offenses separate during their deliberations, the direct, strong, and distinct evidence, presented in support of both incidents, minimized the improper cumulative impact. Appellant's trial defense counsel failed to request special instructions or special findings on this issue. In the absence of plain error, we find this to be waived. *United States v. Williams,* 28 M.J. 484 (C.M.A. 1989). Assuming, *arguendo,* the military judge was in error, his error was not "obvious and substantial," nor did it have "unfair prejudicial impact on the jury's deliberation." *United States v. Fisher,* 21 M.J. 327 (C.M.A. 1986), *citing United States v. Young,* 105 S. Ct. 1047, n.14 (1985). We uphold the military judge's decision not to sever the charges and find that it was not an abuse of discretion. *See United States v. Curry,* 31 M.J. 359 (C.M.A. 1990); *Haye, supra,* at 215; *United States v. Hogan,* 20 M.J. 71 (C.M.A. 1985); *United States v. Kirks,* 34 M.J. 646 (A.C.M.R. 1992); *United States v. Silvis,* 31 M.J. 707 (N.M.C.M.R. 1990).

POTENTIAL FOR VIOLENCE OPINION

During sentencing, the prosecution presented an expert clinical psychologist, Major Larson. After laying the appropriate foundation for his expertise and having him set out the counseling and testing her performed on appellant, trial counsel asked Major Larson the following questions:

Q. Based on the knowledge of the findings of this court, together with the results of the various tests that you had administered, together with the various sessions that you had with Sergeant Ross in the month of October 1990–

A. Yes.

Q. –do you have an opinion as to the accused's future potential for violence?

A. I think the potential is very high for violence.

Q. What situations would likely trigger future violence?

A. Because of the tendency to get overly involved rather quickly in a relationship. If an individual decided they no longer wanted to date the individual after two, or three dates, or something, that would trigger a violent reaction.

The trial defense counsel did not cross examine Dr. Larson, having previously objected to this testimony at an Article 39a session. Two additional government sentencing witnesses and appellant's unsworn statement followed this testimony. In an Article 39a session after the defense rested, trialefense counsel requested a mistrial. The military judge denied the motion for a mistrial and gave the following curative instruction to the court members:

MJ: Let me tell the members of the court before we begin with arguments. I want you to disregard the testimony of Dr. Larson. Basically, it isn't

> helpful. And, his testimony isn't relevant, and it shouldn't have been admitted. Basically, he testified that in his opinion the accused has violent tendencies. Well, he based that on the charges. You have as much before you as he had before him in making that determination. So, it's not a matter of expert opinion. So, I want you to just disregard his testimony. Can each of you do that? Affirmative nod from each of the members.

Two possibilities exist for the admission of "potential for violence" testimony: R.C.M. 1001(b)(4) (aggravation) and (5) (rehabilitation). Initially, the military judge found Major Larson's testimony was relevant in the area of rehabilitation potential. We have rejected both theories for the admissibility of this kind of "future dangerous" testimony. *United States v. Williams,* 35 M.J. 812 (A.F.C.M.R. 1992). It should have been excluded.

We must now determine whether this error resulted in any prejudice to appellant. The declaration of a mistrial is a drastic remedy that should not be invoked unless the preferred alternative of giving curative instructions to the members if found manifestly inadequate. *United States v. Evans,* 27 M.J. 34 (C.M.A. 1988), *cert. denied,* 488 U.S. 1011, 109 S. Ct. 797, 102 L. Ed. 2d 788 (1989). Absent evidence to the contrary, a jury is presumed to have complied with the judge's instructions. *See Lakeside v. Oregon,* 435 U.S. 333, 98 S. Ct. 1091, 55 L. Ed. 2d 319 (1978); *United States v. Ricketts,* 1 M.J. 78 (C.M.A. 1975). We find the military judge did not abuse his discretion by denying defense's request for a mistrial. We find the military judge's strong curative instruction was sufficient to purge any prejudice to appellant. *United States v. Rushatz,* 31 M.J. 450 (C.M.A. 1990); *United States v. Morris,* 13 M.J. 297 (C.M.A. 1982); R.C.M. 915.

CONCLUSIONS

Appellant in three assigned errors, asserts the evidence against him was insufficient to support the findings of guilty. In evaluating this record of trial, we must determine not only the legal sufficiency of the evidence but also its factual sufficiency. On the basis of the entire record, we are satisfied that the evidence is legally sufficient to establish appellant's guilt. *Jackson v. Virginia,* 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Further, having weighed the evidence in the record of trial, and allowing for not having personally observed the witnesses, we are convinced beyond a reasonable doubt as to appellant's guilt. *United States v. Turner,* 25 M.J. 324 (C.M.A. 1987); Article 66(c), UCMJ.

The maximum sentence authorized in this case was a dishonorable discharge, confinement for life, total forfeitures, and reduction to E-1. Appellant complains the sentence he received as inappropriately severe. The sentence adjudged at trial was a dishonorable discharge, confinement for 20 years, total forfeitures, and reduction to E-1. Appellant slashed and stabbed his wife with a knife, brutally attacked his girlfriend with a coat hanger, kidnapped both women, and assaulted his minor stepson. In its context, we do not find the sentence unreasonably severe. *United States v. Healy,* 26 M.J. 394 (C.M.A. 1988).

We have examined the remaining assigned errors and find they lack merit. The findings and sentence are correct in law and fact, the sentence is appropriate, and no error prejudicial to the substantial rights of appellant was committed. Article 66(c), UCMJ. Accordingly, the findings of guilty and sentence are

AFFIRMED.

Senior Judge O'HAIR and Judge SNYDER concur.

[Seal Omitted]

OFFICIAL

/s/ Naomi D. Allen
NAOMI D. ALLEN
TSgt, USAF
Chief Court Administrator, AFCMR